

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN RAY JULIAN,

Defendant-Appellant.

UNPUBLISHED

March 31, 2000

No. 214641

Muskegon Circuit Court

LC No. 93-036389 FH

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence for probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 14, 1994, defendant pleaded guilty to delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). The sentencing guidelines range was computed at 0 to 6 months, and defendant was sentenced to two years of probation.

Defendant pleaded guilty to violating his probation by leaving a drug treatment program, and for testing positive for marijuana and cocaine usage. The order of probation was amended, and defendant was continued on probation. The instant probation violation charge arises out of defendant's subsequent failure to report to his probation officer, and his failure to pay the costs of probation. Defendant was found guilty after a hearing. At sentencing, the trial court observed that defendant was a repeat violator who had absconded from his probation, and it imposed an 18 month to 4 year sentence.

This Court will review a sentence for abuse of discretion. *People v Williams*, 223 Mich App 409, 410; 566 NW2d 649 (1997). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing guidelines do not apply to sentences for probation violation. *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992).

A trial court is at liberty to consider defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation in arriving at the proper sentence to be given. *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991). Although defendant's original sentencing guidelines range was 0 to 6 months, his multiple probation failures support a longer sentence. *Williams, supra; Reynolds, supra*.

There is no showing that the trial court abused its discretion in sentencing defendant above the guidelines range, based on his repeated violations of the conditions of his probation. Where a sentence is proportionate to the offense and the offender, it does not constitute cruel or unusual punishment. *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997).

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey